

## **AGREEMENT**

**THIS PROFESSIONAL SERVICE CONTRACT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE METRO DEPARTMENT OF PUBLIC HEALTH AND WELLNESS** herein referred to as “**METRO GOVERNMENT**” or “**LMPHW**”, and **THE UNIVERSITY OF LOUISVILLE**, acting by and through its **SCHOOL OF DENTISTRY**, with offices located at 501 South Preston Street, Louisville, Kentucky 40292, herein referred to as “**CONSULTANT**” or “**SCHOOL OF DENTISTRY**”,

### **WITNESSETH:**

**WHEREAS**, LMPHW requires services for the provision of limited dental care of LMPHW patients at the U of L School of Dentistry; and

**WHEREAS**, the Consultant has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

#### **I. SCOPE OF PROFESSIONAL SERVICES**

**A.** Consultant shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The Consultant’s work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

**B.** If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant shall notify the proper agent of the Metro Government of this need and arrangements may be made for that contingency. However, at no time shall the Metro

Government make available its resources without the full consent and understanding of both parties.

**C.** Consultant, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services rendered.

**D.** The services of Consultant shall include but not be limited to the following:

1. Provide limited dental care to qualifying eligible patients of the LMPHW and offer to all eligible patients, a degree of dental service consistent with established LMPHW policies.
2. Provide appointments at its various teaching clinic facilities. The number of appointments shall be based on the teaching needs of the Dental School, the financial resources of the LMPHW and the Dental School, and patient demand. Assigned appointments shall be adjusted periodically to ensure that clinic utilization meets the teaching needs of the School of Dentistry, consistent with the financial resources of the LMPHW and the School of Dentistry.
3. Screen patients referred by LMPHW according to guidelines established by the LMPHW and shall be certified as eligible for dental care under existing program guidelines.
4. Report to LMPHW the costs and services provided for use in program evaluation and monitoring program purposes.
5. Allow the Director of Health the authority to review the records of patients treated under this Agreement and provide the Director as requested duplicate records of patient care to monitor and evaluate program effectiveness.
6. Provide all facilities, equipment, supplies, personnel, and any other items necessary to the provision of dental health services described by this agreement in full consideration for the fee for service payment by the LMPHW described in the attached contract.
7. Maintain financial and dental treatment records on all LMPHW patients, which at anytime, may be audited by the LMPHW or its designee.

## **II. FEES AND COMPENSATION**

**A.** The Metro Government shall pay Consultant **FIFTY FOUR THOUSAND DOLLARS (\$54,000)** in quarterly increments for the value of the services rendered by the School of Dentistry under this Agreement. The School of Dentistry shall bill patients

in accordance with the existing DMD student fee schedule, which is attached to this Agreement as Exhibit A. Changes in said fee schedule shall be made only upon written agreement of the parties. Total payments made by the Metro Government under this Agreement shall not exceed **FIFTY FOUR THOUSAND DOLLARS (\$54,000)**.

**B.** Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefore shall be made at monthly intervals throughout the duration of this Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract, the particular nature of such service and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

**C.** Consultant shall only be reimbursed out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this contract. The Metro Government will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. The Metro Government reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

**D.** Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings and out-of-pocket expenses to the Metro Government which are of benefit to the other parties and to provide documentation to all parties to verify the pro-ration of such billings and expenses. In no

event will the Metro Government pay bills or expenses which are considered to be double billing (i.e. billing two different parties for the same work or expense).

**E.** Consultant agrees that all outstanding invoices at the end of the fiscal year (June 30) must reach the Metro Government no later than July 15 of the following fiscal year. Consultant agrees that original invoices that are not in Metro Government possession by this time will not be paid and Consultant agrees to waive its right to compensation for services billed under such invoices.

### **III. DURATION**

**A.** This Agreement shall begin July 1, 2007 and shall continue through and including June 30, 2008.

**B.** This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**C.** In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

#### **IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

#### **V. RECORDS-AUDIT**

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

#### **VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

Consultant and the University of Louisville (U of L), as agencies of the Commonwealth of Kentucky, although vested with sovereign immunity, are subject to the Board of Claims Act, KRS 44.070-44.160. Claims against Consultant and U of L

relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by that Act and other applicable law, the Consultant, as agent for the University of Louisville for receiving grants and research agreements from external funding sources, shall defend, indemnify and hold harmless the Metro Government from and against any and all claims which may result from any error or omission arising out of Consultant's and U of L's performance under this Agreement.

#### **VII. INSURANCE REQUIREMENTS**

Insurance coverage shall be required of Consultant in accordance with Schedule B attached hereto.

#### **VIII. REPORTING OF INCOME**

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

#### **IX. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or

obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**X. AUTHORITY**

The Consultant, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**XI. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

## **XII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not



embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

### **XIII. OCCUPATIONAL HEALTH AND SAFETY**

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

### **XIV. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

### **XV. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

### **XVI. COUNTERPARTS**

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

**XVII. CALCULATION OF TIME** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XVIII. CAPTIONS** The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

**XIX. MISCELLANEOUS** Consultant agrees that, in the event it receives from the Metro Government any protected health information, it will not disclose any of that information to any third party and, in that regard, Consultant agrees to comply with the rules and regulations of the Health Insurance Portability and Accountability Act ("HIPAA"), codified in 42 U.S.C. § 1320d and 45 C.F.R. 160-164. Consultant shall hold in strictest confidence all documentation, information, and observations gathered in the performance of this Agreement, and Consultant agrees to sign the Health Department Business Associate Agreement. Consultant further agrees to require any of its subcontractors to both abide by the aforementioned HIPAA prohibitions against the unauthorized disclosure of confidential and protected health information and to sign the Metro Government's Business Associate Agreement.

The Metro Government and Consultant agree to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et. seq.*) and all implementing regulations and executive orders, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701) and the Kentucky Equal Employment Act of 1978 (K.R.S. § 45.550 to 45.640) and the

Americans with Disabilities Act (42 U.S.C. § 12101 *et. seq.*). No person shall be excluded from participation in, be denied the benefits of, or be subject to discrimination in relation to activities carried out under this Agreement on the basis of race, color, age, religion, sex, disability or national origin. This includes provision of language assistance services to individuals of limited English proficiency seeking and/or eligible for services under this Agreement.

Consultant agrees to comply with all constitutional, statutory, regulatory and common law requirements adhered to by the Metro Government pertaining to conflicts of interest.

Consultant nor any of its employees or personnel shall speak on behalf of or as a representative of the Metro Government or the Department of Public Health and Wellness without the express authorization of the Director of that Department or his designee.

The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.

**WITNESS** the agreement of the parties hereto by their signatures affixed hereon.

**APPROVED AS TO FORM AND  
LEGALITY:**

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

\_\_\_\_\_  
**IRV MAZE  
JEFFERSON COUNTY ATTORNEY**

\_\_\_\_\_  
**DR. ADEWALE TROUTMAN, M.D.,  
DIRECTOR, DEPARTMENT FOR PUBLIC  
HEALTH AND WELLNESS**

**Date:**\_\_\_\_\_

**Date:**\_\_\_\_\_

**UNIVERSITY OF LOUISVILLE**

**By:**\_\_\_\_\_

**Title:**\_\_\_\_\_

**Date:**\_\_\_\_\_

**Taxpayer Identification No.  
(TIN):**\_\_\_\_\_

**Louisville/Jefferson County  
Revenue Commission Account  
No.:**\_\_\_\_\_

Health Department - PSC with U of L School of Dentistry for Dental Care at School of Dentistry Fiscal Year 2007-2008 061907- [pr]  
UofL School of Dentistry for Dental Care at School of Dentistry FY2007-2008 Agmt. ROC pr,bkn Draft 2 061907.doc 7-18-07

## **SCHEDULE B**

### **INSURANCE REQUIREMENTS**

University of Louisville by and through the School of Dentistry, agrees to purchase and maintain a Malpractice/Professional Liability insurance policy at its own expense covering University of Louisville, School of Dentistry and all students and residents and cause their treating dentists to purchase and maintain a Malpractice/Professional Liability insurance policy at a minimum limit of liability of \$1,000,000 for each alleged Wrongful Act, Error or Omission for services performed under this agreement, retroactive to the Effective Date of the Agreement. In the event that this insurance is written on a "Claims Made" form, the **University of Louisville, School of Dentistry** shall, upon request, furnish evidence that the liability coverage has been maintained for at least one (1) year after expiration of this agreement, either by submitting renewal policy with a Retroactive data of not later than the date of services commenced under this agreement, or by evidence that an Extended Reporting Period Endorsement has been purchased that will apply to any and all claims arising from services performed under this agreement. **University of Louisville, School of Dentistry** shall provide proof of such coverage by submitting a Certificate of Insurance to the Louisville Metro Health Department (to be reviewed and approved by the Louisville Metro's Risk Management Division) and shall provide renewal Certificates of Insurance to the Louisville Metro's Risk Management Division so that continuous coverage is provided during the term of this agreement. Upon request, certificates shall also be provided for treating dentists.

Insurance is to be placed with insurance companies licensed in the State of Kentucky, or by non-admitted carriers in accordance with Kentucky Insurance Law

(KRS 304.10-040) or through a self-insured group or captive insurance company which is approved by the Louisville Metro's Risk Management Division.

Certificates of Insurance as requested above shall be furnished to:

Louisville/Jefferson County Metro Government  
Finance Department, Risk Management Division  
611 West Jefferson Street  
Louisville, KY 40202

Approval of the insurance by the Louisville/Jefferson County Metro Government shall not in any way relieve or decrease the liability of the University of Louisville, School of Dentistry, or the dentist providing services hereunder. It is expressly understood that Louisville Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liability of University of Louisville, School of Dentistry or the dentist.

**ATTACHMENT A**